

Town of




AMHERST Massachusetts

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DEPARTMENT DIRECTIVE

Accreditation Standard #	NUMBER: 92
SUBJECT: IMMIGRANT COMMUNITY MEMBERS	AUTHORIZED SIGNATURE:  SCOTT P. LIVINGSTONE, CHIEF OF POLICE
New _____ Amends <u>X</u> _____ Rescinds _____ Review _____ Directive #:92	Date of Issue: <u>August 30, 2011</u> Effective Date: <u>September 10, 2011</u> Subsequent Reviews: <u>every 3 yrs.</u>

PURPOSE: This General Order includes updates to policy #92. This policy will remain in effect until updated or rescinded. The Administrative Division will place this policy in all Departmental Policy and Procedure Manuals.

Related policies:
#01: Arrest
#90: Consular Notification

GENERAL ORDER
INDEX III
NUMBER: #92
AUGUST 30, 2011

IMMIGRANT COMMUNITY MEMBERS

I. POLICY PURPOSE

The Amherst Police Department acknowledges that the enforcement of federal immigration laws is the duty of the United States Bureau of Immigration and Customs Enforcement (ICE) which has primary jurisdiction to enforce Title 8 of the U.S. Code dealing with lawful presence in the United States. Immigration issues have recently been a very contentious topic within this country. There are factions within the country which believe that immigration laws should be enforced fully by local law enforcement, and others which believe that local law enforcement and local governments should not be involved in immigration enforcement. The Amherst Police Department does not have the resources nor the authority to enforce immigration laws. It is not within the mission of this department to enforce immigration laws. This policy is designed to clearly state the position of Amherst Police Department in protecting the safety, rights and property of every person within the town of Amherst, regardless of their immigration status.

II. POLICY STATEMENT

The Amherst Police Department shall treat all persons in an equal, fair and respectful manner, regardless of their race, gender, religion, sexual orientation, age, occupation, national origin, or immigration status. This shall be the case regardless of whether the person is a crime victim, suspect, witness, or simply a person in need of police services. Skin color, language, accent, or other individual traits shall not be considered an element in building reasonable suspicion or probable cause, unless these descriptions are pertinent in developing a suspect, such as when we rely on witness or victim recollection of a suspect, and they use such descriptions of skin color, language, accent or other individual trait. Skin color, language, accent, or other individual traits will not be used as a basis for disparate treatment by individual sworn or unsworn personnel of the police department. A person's right to file a report, participate in police-community activities, or otherwise benefit from police services shall not be contingent upon citizenship or immigration status. We value the diversity of our community, and strive to maintain partnerships and positive relationships with the community to improve the quality of life of all persons who visit or call the town of Amherst home.

III. POLICY

The Amherst Police Department does not have the authority to enforce federal immigration laws, unless it is granted by the federal government, which it currently is not. If ICE or another federal agency come into our community to effect an arrest warrant on an individual, and request our assistance, the shift

commander will may authorize this assistance, which would be limited to locating an address, keeping the peace and traffic if necessary. Such assistance will be fully documented in a CAD entry.

In regards to sweeps or concentrated efforts, the Amherst Police Department will assist the ICE, or any other federal law enforcement agency, upon specific request of that agency and upon the approval of the Chief of Police or, in their absence, a Captain. Such assistance will be limited to support services such as traffic control and efforts to keep the peace in specific areas impacted by federal operations. The Amherst Police Department will not independently conduct sweeps or other concentrated efforts to detain or identify suspected undocumented aliens. Such assistance will be documented in an incident report.

A. INQUIRIES OF IMMIGRATION STATUS: We rely on the cooperation of our community to ensure our success in preventing and solving crime. To that end, Amherst Police personnel will not make an inquiry into the immigration status of crime victims, witnesses or others who request our assistance. We do not use the threat of immigration status/deportation as leverage with victims, witnesses or suspects. Amherst Police personnel will only make inquiries regarding immigration status of a person when that person is:

1. a viable suspect in a serious criminal incident (felonies or misdemeanor physical batteries) and criminal charges are imminent and this information will be needed for court complaint documentation or
2. an arrest has already taken place and the individual is at the police station being booked for a crime where the officer has jurisdiction and probable cause to arrest for a Massachusetts Statute or Town of Amherst by law violation. The Amherst Police Department booking process shall include inquiries regarding place of birth and citizenship status for all persons under arrest. All individuals arrested and processed at the Amherst Police Department shall have their identification information queried against the National Crime Information Center (NCIC) as well as Massachusetts Warrant Management System (WMS). Should an ICE warrant, criminal deportation order or detainer be indicated, the officer in charge of the shift shall contact ICE. This responsibility shall not be delegated. Note that an Immigration Detainer is not an arrest warrant and does not provide probable cause for arrest. An Immigration Detainer is an official request from Immigration and Customs Enforcement to another law enforcement agency (LEA)—that the LEA notify ICE prior to releasing an individual from local custody so that ICE can arrange to take over custody. Detainers are requests, not commands. When someone is in custody, and an Immigration Detainer is within the NCIC system, ICE shall be notified. However this does not mitigate our responsibility to allow for bail or consulate notifications as per existing policy and law.
3. Exceptions to this rule shall only be allowed where an officer is investigating violations of specific criminal statutes and has reached the point of reasonable suspicion as to the true identity of the suspect.

B. ICE NOTIFICATION OF IMMIGRANT CRIMINALS: To ensure the overall safety of our community, it is important that we use all resources to prevent crime and combat crime and disorder in our community. We also want to maintain the strong and positive relationships that our personnel have built with immigrant community members within their sectors. Therefore, it is important to understand that notification to ICE is a tool that is only used for undocumented alien **criminals**. We rely on the

Massachusetts Department of Corrections to notify ICE of undocumented immigrants who have been convicted of felonies, under the existing agreement between the Commonwealth of Massachusetts and the Department of Homeland Security under their 285(g) agreement.

C. PROCEDURES FOR IMMIGRATION COMPLAINTS: Citizens wishing to report immigration violations shall be referred to the U.S. Immigration and Customs Enforcement public toll free tip hotline at 1 866 DHS-2- ICE, (1 866 347 2423). They should be notified that the Amherst Police Department does not have the authority to enforce federal immigration laws.

D. BASIS FOR POLICE CONTACT: Persons suspected of only being an undocumented alien alone shall not be the basis for police contact, investigation, detention, or arrest. Detention based on the belief of illegal presence or a civil immigration violation is prohibited. As we are mandated by law to act upon any arrest warrant, we will make a lawful custody of a confirmed and legal criminal deportation order or ICE warrant that is entered into the NCIC database system, and the appropriate ICE office will be notified. An Immigration Detainer is not a warrant and does not have probable cause for arrest.

E. IDENTIFICATION REQUESTS: Officers investigating persons for violations of Massachusetts Criminal or Town of Amherst Laws may request driver's licenses and other pieces of standard identification, such as a Commonwealth of Massachusetts Identification Card or valid college identification card. Unless the person being investigated for a violation of MGL or Amherst law cannot produce the above mentioned acceptable forms of identification, an officer shall not request passports, visas, or travel documents. What is important to understand is that passports, visas, or travel documents will not be requested in the field **in lieu of, or in addition to**, those acceptable forms of identification listed above when the acceptable forms of identification can be produced. However, it is recognized that in the town of Amherst both foreign and out of state resident students rely on their passport or visa to prove age and identity, and they will often carry these documents on their person and provide them when a request for identification is made. Officers will not be in violation of this policy if a passport or visa is produced in such circumstances. An exception to this is when an officer is investigating violations of specific criminal statutes such as document forgery and has reached the point of reasonable suspicion as to the true identity of the suspect, a request for passports, visas or travel documents can be made.

F. CERTIFICATE OF ALIEN REGISTRATION: Section 1304 (e), Title 8, U.S. Code provides: "Every alien, eighteen years of age and over , shall at all times carry with him and have in his personal possession any certificate of alien registration or alien registration receipt card issued to him pursuant to subsection (d) of this section. Any alien who fails to comply with the provisions of this subsection shall be guilty of a misdemeanor and shall upon conviction for each offense be fined not to exceed \$100.00 or be imprisoned not more than thirty days, or both." This Federal Statute **shall not** be enforced by the Amherst Police Department.

G. CONTACT DISPOSITION: The disposition of each police contact such as warning, citation, or arrest, shall not be affected by immigration status.

H. PASSPORT SEIZURE: Passports may only be seized if they are contraband, the fruits or instrumentalities of a crime, evidence of a violation of state criminal law (such as forgery of a passport

or identity theft), evidence of federal criminal law (such as forgery of a passport or human trafficking), or illegally possessed. Passports seized for these purposes should be processed like any evidence in conformance with the department's policy entitled # 48 Property and Evidence. Once the case has been adjudicated, the passport should be forwarded to the originally intended owner, or the Department of State, Lost or Stolen Passport Section, 1111 19th Street NW, Room 500, Washington, DC 20522-1705.

I. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT NOTIFICATION: The Law Enforcement Support Center for ICE is located at 188 Harvest Lane Williston, VT 05495 and may be contacted via phone at 802 872 6020 or via NLETS at VTINS07SO. The Boston ICE Field Office can be reached at 617 565 3100. Additionally, the Duty Agent for Massachusetts can be contacted at the 24 hour ICE Dispatch Line of 800-973-2867.

J. NOTIFICATION OF FOREIGN NATIONAL'S DETENTION OR ARREST: We will adhere to those mandates regarding consular notifications as detailed in policy #90, Consular Notifications.

K. PRISONER TRANSFERS: Other agency officers taking custody of persons arrested by the Amherst Police Department such as when being picked up by another police department, or being temporarily housed by the Hampshire County Jail, shall be informed of any known or suspected citizenship status violations as well as any steps taken by the Amherst Police Department up to the time of the transfer.

IV. VICTIMIZATION AND U-VISA CERTIFICATION:

The relationship between police and immigrant communities is often a strained one. Immigrant's mistrust of law enforcement is based on their experience with the police in their native country, existing language barriers, and cultural differences. It is also known that undocumented immigrants are vulnerable to criminals as many undocumented immigrants cannot open up bank accounts without proper identification, thus they tend to have large sums of cash at their homes and on their person. When victimized, they often do not report crimes as they are afraid that they will be deported. The federal government developed a program that allows for victims to feel safe when reporting a crime, which is called the U-Visa Certification program. The U-Visa program grants temporary four year legal status to immigrant victims. The U-Visa Certification program was introduced as part of the Victims of Trafficking and Violence Prevention Act of 2000 and its intent was to:

1. strengthen the ability of law enforcement to detect, investigate and prosecute cases of domestic violence, sexual assault, human trafficking and other crimes and
2. offer protection to victims of such crimes.

A. ELIGIBILITY: To be eligible for a U-visa, immigrant victims must meet four statutory requirements and they must include a certification from a certifying official or agency that they have been, are being, or are likely to be helpful in the detection, investigation, or prosecution of a qualifying criminal activity. The law requires that a person who is eligible for a U-visa must:

1. have suffered substantial physical or mental abuse as a result of having been a victim of a listed criminal activity;
2. possess information concerning such criminal activity;

3. have been helpful, be helpful, or be likely to be helpful in the investigation or prosecution of a crime; and
4. have been the victim of a criminal activity that occurred in the United States or violated the laws of the United States.

The U-visa certification must affirm the immigrant victim's past, present, or future helpfulness in the detection, investigation, or prosecution of certain qualifying criminal activity. The Chief of Police of the Amherst Police Department may, under very strict U-Visa guidelines and after consultation with the District Attorney's Office, certify as part of a U-Visa Application an immigrant victim's cooperation with the Amherst Police Department. Law enforcement officials who sign certifications do not confer any immigration status upon the victim, but rather enable the victim to meet one of the eligibility requirements in the victim's application to U.S. Citizenship and Immigration Services of the Department of Homeland Security (DHS). Only DHS has the discretion to grant or deny U-visa status to the victim.

A victim who received certification and was granted a U-visa has an ongoing obligation to provide assistance. Law enforcement officials may notify the United States Citizen and Immigration Services directly for cases in which victims are no longer helpful. However, such notification is appropriate only when the victim's lack of cooperation is not reasonable.

As a victim's cooperation is essential to detect, investigate and prosecute crimes, Amherst police officers should be aware of its availability and applicability within this community. Please see appendix #1, *UVISA QUICK REFERENCE FOR LAW ENFORCEMENT OFFICIALS* for helpful information.

B. OUTREACH AND COMMUNITY NOTIFICATION: It is important that the immigrant community know that this agency is a resource for assistance, not deportation. It is also important that the community understand that the Amherst Police Department has no authority to enforce immigration laws, so as to not be unjustly accused of a dereliction of our duty. To accomplish this notification, officers will be encouraged to discuss this policy with community members within their sectors. The Administrative Division will make this policy available through Community Policing/Outreach Events, the Records Department, and by posting it on the department website and other online resources.

APPENDIX 1

U-VISA QUICK REFERENCE FOR LAW ENFORCEMENT OFFICIALS

Purpose of the U-visa

- The U-visa facilitates the reporting of crimes to law enforcement officials by immigrant victims of crime, including domestic violence, sexual assault, human trafficking and other crimes listed in the U-visa statute.

Benefits of the U-visa

- This type of visa strengthens law enforcement agencies' ability to detect, investigate, and prosecute crime while offering immigrant crime victims legal immigration status, work authorization, and protection from deportation.

Who is eligible for a U-visa?

To be eligible for a U-visa

- an individual must have suffered substantial physical or mental abuse as a result of having been a victim of one or more qualifying criminal activities;
- the individual must possess information concerning the criminal activity;
- the individual must be helpful, have been helpful, or be likely to be helpful to a federal, state, or local official in the detection, investigation, or prosecution of the criminal activity; and
- the criminal activity must have occurred in the United States or its territories and possessions or violated U.S. laws.

U-visa Qualifying Criminal Activity

- U-visa qualifying criminal activity includes, but is not limited to: rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, solicitation to commit any of the above-mentioned crimes, or *any similar activity* in violation of federal, state, or local criminal law.
- The term *any similar activity* accounts for the wide variety of state and federal criminal laws that may have names different from the criminal activity listed in the statute but are comparable in nature and elements to the enumerated criminal activity.

Status of Crime Perpetrator

- A victim may qualify for a U-visa certification regardless of whether there is any familial relationship between the victim and the perpetrator. The perpetrator may have any immigration or citizenship status such as U.S. citizen, legal permanent resident, diplomat, work-visa holder, or undocumented immigrant.

Certification Requirements

- A certifying official must complete U.S. Citizenship and Immigration Services (USCIS) Form I-918, Supplement B. A certifying official is the head of a law enforcement agency or a person(s) with supervisory responsibility designated by the head of the agency to provide certifications.
- The certification is necessary to establish eligibility for the U-visa, but by itself does not grant immigration status to the victim. To obtain a U-visa, a victim must meet certain eligibility requirements, in addition to obtaining a U-visa certification. USCIS has sole authority to grant or deny a U-visa.
- The certification should provide specific details about the nature of the crime being detected, investigated, or prosecuted, and describe the petitioner's helpfulness in the case.
- U-visa certification does not require that law enforcement investigate the criminal activity beyond reporting of the crime. The certification attests only to the U-visa petitioner's willingness to be helpful or past or present helpfulness in detection, investigation, prosecution, or investigation efforts.

Assessing the Helpfulness of the U-visa Applicant

- If a U-visa petitioner filed a police report and is willing to assist—or has assisted or cooperated—with detection, investigation, or prosecution of criminal activity, a certification may be provided even when the initial investigation efforts do not lead to further investigation and/or do not result in a prosecution or a conviction.
- Law enforcement officials may issue a certification at any time after detecting a qualifying criminal activity if the officer believes criminal activity occurred and identifies a person as a victim of criminal activity. The investigation need not be complete prior to issuing a certification.
- Congress intended to allow victims to obtain U-visa certifications at very early stages of crime detection—during investigations into criminal activity.
- To be eligible for lawful permanent residence, the victim has an ongoing responsibility to provide assistance when reasonably requested, as the statute specifies.